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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No 75-102

WALTER LEE McELROY AND VIRGINIA McELROY,
Petitioners,

vs.

RICHARD LOUIS TAYLOR,
Respondent.

BRIEF OF RESPONDENT RICHARD LOUIS TAYLOR IN OPPOSITION.

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The issues presented in the Petition for *Certiorari* do not arise on the record below. First, the facts of this case, only a portion of which are set forth by petitioners, are unique and belie petitioners' contention that the resolution of this case "raises significant questions as to the legal status of large numbers of foreign born children who have been adopted in the United States." Second, the so-called "Act of State" doctrine simply has no place in this lawsuit. Both of these factors make *certiorari* inappropriate in this case.

REASONS FOR DENYING THE WRIT.

1. The Facts of the Case are Unique.

This is the story of an American serviceman, Richard Taylor, who fathered a child while stationed in South Korea and who attempted to bring her to this country and to obtain custody of

her.[1] Respondent Richard Taylor was stationed in Korea in 1967. During his tour of duty, Mr. Taylor became the father of a "mixed-blood" Korean child, Kimta Francoise Taylor. After his discharge from the service, Mr. Taylor returned to Korea to marry the mother of his child, to obtain American citizenship for the child, and to bring his family to the United States. Having accomplished his first two objectives, respondent Taylor was unable to secure the prompt issuance of a visa and a passport for his wife and was forced to return to the States without his family, but with the understanding that his wife and daughter were soon to follow.

Mr. Taylor returned to the States in April, 1968. After his return, respondent maintained communications with his wife through June, 1970. During this period, the wife insisted that the delay in coming to the States was caused by her inability to obtain a visa. However, in March of 1971, respondent learned that his wife had changed her mind about coming to the States, had abandoned the child with a mutual friend in July of 1970, and had not been seen since. The undisputed record in this case is that from March, 1972, Mr. Taylor did everything in his power to locate his daughter and to bring her to the United States. He sent money to the friend who had the child, and when he could afford to do so, sent a one-way airline ticket. Mr. Taylor solicited the assistance of both the State Department and Pan American World Airways and through the latter he learned in March, 1972, that his daughter had been placed with the Holt Adoption Agency. Respondent immediately contacted the Holt Adoption Agency to seek their assistance. Mr. Taylor sent Holt pictures of the child, her birth certificate, and an explanation of his situation. Holt was of no assistance to Mr. Taylor.

1. The facts presented in this section are taken from the Tennessee decisions reproduced in the Appendix to the Petition for Certiorari, and are not in dispute. References to that Appendix are as follows (App. ....).

In fact, Mr. Talor's child had been placed with the Holt Agency in February, 1971. Sometime during July, 1971, Holt initiated certain administrative procedures in Korea which resulted in Kimta Taylor being declared an orphan and Holt being appointed the child's guardian with the power to place the child for adoption. Holt then arranged for the adoption of the child by the McElroys, the petitioners in this matter. In February, Holt secured an IR-4 visa (orphan to be adopted in the United States) for the child and placed her on a plane to the States.[2]

Mr. Taylor learned of these latter events and the impending adoption, not from the Holt Agency, but from the Department of State in March of 1972. In March, 1972, the McElroys initiated adoptive proceedings in the Chancery Court of Hamilton County, Tennessee. Mr. Taylor intervened in these proceedings and sought to secure the custody of his natural child. After a full hearing, the Tennessee court found in favor of Mr. Taylor's claim, declaring: (a) that respondent Richard Taylor is a "fit and proper person to have custody" and indeed is the natural father of the child up for adoption; and (2) "Mr. Taylor has divorced the Korean mother of said child and has remained and is able, financially, socially and in other ways, to afford a proper home for the upbringing of said child." (App. 24.)

2. The Holt Adoption Agency has sought leave to file an *Amicus Curiae* brief in this mattter. It cannot go without notice that if there is one party to this entire proceeding that could have avoided this human tragedy it is Holt. However, for reasons known only to the Holt Agency, it chose simply to continue the arrangements it had made for the child's adoption. When the fight arose over the adoption it had arranged, Holt refused to cooperate with the Tennessee courts, causing the Judge to comment:

> The Court is further convinced that the Holt Adoption Agency has not been helpful to the Court on the information available to it up to this point, although it did make said information known to the U. S. Department of State because the Department of State knew the date, the hour and the flight that said natural child of Mr. Taylor was placed on in Seoul, Korea for destination to Chicago, Illinois and eventually to be adopted by the McElroy's in Chattanooga.

(App. 24).

The decision to place Kimta with her natural father was affirmed by both the Tennessee Court of Appeals and the Tennessee Supreme Court.

The fact that a Tennessee Court chose to award Kimta Taylor to her natural father, after an adoption contest, does not jeopardize the legal status of a single Asian child adopted in this country. The Tennessee decision was carefully drafted to resolve the unique issue posed by the facts of this case and is expressly limited in this regard. The legal status of those Asian children who, unlike Kimta Taylor, were legally adopted in this country, remains the same. Under these circumstances, the petition should be denied.

2. The Act of State Doctrine, if at All Applicable to This Case, Has Not Been Violated.

Petitioners seek the issuance of the Writ of *Certiorari* on the sole ground that the Tennessee Courts erred in declining to apply the "Act of State" doctrine to this case. The "Act of State" relied upon by petitioners is an administrative proceeding in Korea in which Kimta was given a new name and Holt was appointed guardian with the power to consent to Kimta's adoption. These administrative procedures were established to facilitate the adoption of mixed-blood Korean children. Holt exercised its authority as the child's guardian when it consented to Kimta's adoption by the McElroys in the United States. Any interest Korea had in the adoption of Kimta Taylor ended once her guardian placed her up for adoption.

The adoption proceedings, however, took place in Tennessee, not in Korea. Mr. Taylor intervened in the Tennessee proceedings and contested the adoption. The Tennessee Courts looked to Tennessee law to decide whether to place Kimta with Mr. Taylor, her natural father, or with the McElroys.

The Korean government has absolutely no interest in the adoption proceedings themselves, particularly in the question of

whether Kimta is placed with her natural father or with the McElroys. To suggest that Korea has any legitimate interest in the actual placement of Kimta is ludicrous in light of the fact that Korea has no place for mixed-blood children like Kimta in its own society and in fact considers them outcasts, or non-citizens. The decision to place Kimta with her natural father was properly resolved by a Tennessee Court under Tennessee law.

CONCLUSION.

The question posed by petitioners does not arise in this record. For this reason, Petition for *Certiorari* should be denied.

Respectfully submitted,

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